IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4305 OF 2006

M/s Indtradeco Ltd. & Ors. .... Applicants

Versus

The State of Maharashtra & Ors. .... Respondents

Mr. Paras h/f A.H.H. Ponda for the Applicants

Mr.U.V. Nikam, APP for Respondent No. 1.

Mr. Yashpal Thakar for Respondent No. 2.

CORAM : A.S. OKA, J.

DATE : 8TH DECEMBER 2006

ORAL JUDGMENT

1) Rule. Learned Advocate for the 2nd Respondent waives service. Learned APP waives service for the 1st Respondent. Taken up for hearing forthwith.

2) The Applicants have been arraigned as accused Nos. 1,2, 4 and 7 in a complaint filed by the 2nd Respondent alleging commission of offence under Section 138 read with 141 of Negotiable Instruments Act, 1881.

3) A revision application was preferred by the

Applicant No. 4 before the Sessions Court, which was disposed of by an order dated 18th April 2006. While dismissing the revision filed by Applicant no. 4, the learned Ad-hoc Additional Sessions Judge, Mumbai directed the Trial Court to expedite the hearing of the complaint and to decide the complaint within two months. After the said order was passed, on 2nd August 2006, there was an agreement executed in writing by and between the 2nd Respondent and the Applicant no. 4. By the said agreement, the Applicant no. 4 agreed to pay a total amount of Rs.60,00,000/- to the 2nd Respondent by 11 instalments set out in the agreement. The agreement provides that the 2nd Respondent will withdraw the complaint upon receipt of amount of Rs.66,00,000/- in terms of the said agreement.

4) The grievance of the Applicants is that in view of the order passed by the Sessions Court, the learned Trial Judge is not inclined to adjourn the hearing of the complaint till 31st May 2007. It is submitted that if the hearing of the complaint is adjourned till 31st March 2007, by that time the entire payment in terms of the agreement will be made and offence can be compounded.

5) I have heard learned Advocates for the parties. The learned Advocate for the 2nd Respondent did not dispute the execution of the agreement. He states that as per the agreement, first 5 instalments have been

paid by the Applicants. He states that so long as the Applicants comply with the terms of the agreement, the 2nd Respondent has no objection if the trial is stayed.

6) I have considered the submissions. An offence under Section 138 of the said Act of 1881 can be compounded by virtue of Section 147 of the said Act of 1881. The settlements in cases of offence 138 of the said Act of 1881 are to be encouraged. In this case, there is no dispute about the fact that there is an amicable settlement. Before the offence is compounded or the complaint is withdrawn, the 2nd Respondent (original complainant) naturally wants to ensure that entire amount as agreed is paid by the Applicants. Considering the admitted agreement between the parties,in my view trial deserves to be stayed till 1st week of June 2007. In the event the Applicants fail to comply with the terms of the agreement, the trial can proceed thereafter.

7) Hence, application is disposed of by passing following order :

(I) The Proceedings of Case No. 121/SS/ 05 pending before the Court of Additional Chief Metropolitan Magistrate, 13th Court at Bhoiwada, Mumbai will remain stayed till 5th June 2007.

(II) If the settlement between the parties is acted upon, the parties will make necessary application in that behalf before the learned Trial Judge. If settlement is not acted upon, the Trial Court will be free to proceed with the hearing of the case after 5th June 2007. To this extent, the direction given by the Sessions Court in order dated 18th April 2006 in Criminal Revision Application No. 388 of 2005 stands modified.

(III) Parties and the concerned Court are directed to act on an authenticated copy of this order.

(A.S. OKA, J.)